TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 367

BROOKS-SCANLON CORPORATION, APPELLANT,

vs.

THE UNITED STATES

FILED JUNE 11, 1923

No. 385

THE UNITED STATES, APPELLANT,

vs.

BROOKS-SCANLON CORPORATION

FILED JUNE 23, 1923

APPEALS FROM THE COURT OF CLAIMS

(29,677) (29,695)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 15, 1923

[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

No. 34464

BROOKS-SCANLON CORPORATION

vs.

THE UNITED STATES.

I. PETITION AND AMENDED PETITION

On March 13, 1920, the plaintiff filed its original petition. Subsequently, to wit, on June 12, 1920, by leave of court, the plaintiff filed its amended petition. Said amended petition is as follows:

II. AMENDED PETITION—Filed June 12, 1920

Amended Petition

To the Honorable, the Court of Claims:

1. Your claimant states that the East Coast Transportation Company, hereinafter named, was a corporation duly incorporated and existing under the laws of the State of Delaware, and that the Carpenter-O'Brien Company hereinafter named, was and is a corporation duly incorporated and existing under the laws of the State of Delaware, and that thereafter on the 8th day of December, 1917, the said Carpenter-O'Brien Company duly amended its articles of incorporation and such proceedings were duly had thereunder that the name and title of said Carpenter-O'Brien Company was thereby changed from the said name and title to the Brooks-Scanlon Corporation hereinafter named the claimant herein; and that the [fol. 2] New York Shipbuilding Company hereinafter named was and is a corporation duly incorporated and existing under the laws of the State of New Jersey; and that after the execution and delivery of the construction contract hereinafter described the said corporation duly transferred all of its rights and interests in and to the contracts and rights and interests thereunder to the New York Shipbuilding Corporation, described in the requisition notice hereinafter set forth, a corporation duly organized and existing under the laws of the State of New York.

2. That on the 28th day of March, 1916, the said East Coast Transportation Company as owner, duly entered into a contract in writing with the said New York Shipbuilding Company, as builder, whereby the said builder agreed to construct for the said owner or its assigns, in a workmanlike manner, a single screw steel cargo steamer, according to plans and specifications in said contract set

forth, to be delivered to said owner at the dock of the contractor and builder, at Camden, N. J., on or before the 1st day of February, 1918, and that in and about the performance of said contract, to obtain and supply therefor suitable materials, equipment and supplies, and employ suitable labor thereon, necessary to complete said contract; that thereafter such agreements were made for alterations and supplementary work thereon so that on the 25th day of May, 1917, the ship described in and deliverable under said contract should be of a tonnage of 8,597 dead weight tons. That by said contract it was further agreed that said builder should receive from the said owner as compensation for such work, materials, equipment, supplies and labor so obtained, furnished and utilized under said contract and for the construction of said ship as aforesaid, the full sum of eight hundred thirty-one thousand, five hundred dollars ($831,500) to be payable as follows: Five hundred and ninety-five [fol. 3] thousand dollars ($595,000) thereof to be paid by certain sums of cash payable at the signing and at the completion of said contract, and the remainder to be paid by monthly instalments of forty-five thousand dollars ($45,000) for each month for eleven successive months, beginning on the 1st day of March, 1917, and ending on the 1st day of January, 1918, of which twenty thousand dollars ($20,000) thereof should be cash and twenty-five thousand dollars ($25,000) thereof should be by a promissory note signed by the owner to the order of the builder, dated of the 1st day of the month of the issuance of the note, and due February 1, 1918, with interest thereon at the rate of five per centum (5%) per annum until paid, and in addition, forty thousand, five hundred dollars ($40,500) on delivery of said ship, payable fifteen thousand, five hundred dollars ($15,500) in cash, and twenty-five thousand dollars ($25,000) by a note payable February 1, 1918, dated on the day of delivery, of the same description, terms and bearing the same interest as said notes above described; and it was further agreed that all of said notes should be a first lien upon the said vessel, and, at maturity thereof, should be funded into serial coupon bonds of the denominations of one thousand dollars ($1,000) each, executed by said owner and payable to bearer, secured by first mortgage on said ship, bearing interest at the rate of 5 per centum, payable semi-annually, until paid, and fifteen thousand dollars ($15,000) of said bonds shall mature every six months thereafter, beginning six months from the date of said bonds, and ending in ten years from the date of said bonds; and further, in addition thereto, as compensation for said alterations and supplements to said ship as above stated, and as a further sum for increased labor costs thereon, and to enable the rate of interest on said bonds to be at the rate of five per centum (5%) per annum, the said owner agreed to pay to said [fol. 4] builder the further sum of two hundred thirty-six thousand, six hundred thirty dollars ($236,630), making the total amount to be paid to said builder from said owner under said contract, eight hundred thirty-one thousand, six hundred thirty dollars ($831,630) as above set forth, and as in said contract and supplements provided. That said owner had paid said builder up to and including the 3d

day of August, 1917, the sum of four hundred nineteen thousand, five hundred dollars ($419,500) of which two hundred thirty-nine thousand, five hundred dollars ($239,500) was in cash, at or about the times required by said contract and supplements thereto, and one hundred eighty thousand dollars ($180,000) was in the form of notes as above described. In addition thereto, the said owner had deposited funds to its credit in banks then and ever since solvent in sufficient amounts to be so held and paid to said builder for such cash payments herein described as they should become due under the terms of said contracts and supplements thereto, and that such deposits were thereafter retained for the performance by said owner of its obligations under said contract; so that said owner has always been and is ready, able and willing on its part to perform all of the terms of said contract and the supplements thereto.

3. That said builder, the New York Shipbuilding Company, had, up to the 3d day of August, 1917, duly contracted for all of the materials, equipment and supplies sufficient to complete said ship as specified in said contract, and that a large portion of such material, equipment and supplies had been duly prepared and delivered to the yard of said builder on said day, and that the remainder thereof, sufficient to complete said ship, had been duly contracted for by said builder and was, thereafter, delivered under the provisions of said contracts and entered into the construction and completion of said ship; and that said builder had performed and caused to be [fol. 5] performed a large amount of labor under said contract upon, in and about the construction of said ship, and that said builder had duly paid for said contracts for material, equipment and supplies, the delivery thereof, and for the labor furnished and performed in and about such construction by moneys so paid to said builder by said owner as herein stated; and that said builder, on the 3d day of August, 1917, on its part, had fully complied with the terms of said contract, and was then and was always thereafter ready, able and willing to complete the same in all particulars.

4. That on the 25th day of May, 1917, the said East Coast Transportation Company, for due and sufficient consideration, duly assigned and transferred the said contract for construction of said ship made with said New York Shipbuilding Company, the builder, dated the 28th day of March, 1917, together with all amendments and supplements thereto, and all rights therein, to the said Carpenter-O'Brien Company, now the claimant herein, under its change of name, the Brooks-Scanlon Corporation, as hereinbefore set forth.

5. That on June 15, 1917, by Chapter 29, 40th Statutes at Large, 183, Congress authorized the President, among other things to modify, suspend and cancel or requisition any existing or future contract for the building, production or purchase of ships or materials, etc., and further to purchase, requisition or take over the title to or the possession of, for use or operation by the United States, any ship then constructed or in the process of construction, or thereafter constructed, or any part thereof, or the charter of said ship. In

further accordance with said act the President, by order dated July 11, 1917, deputed to the United States Shipping Board Emergency Fleet Corporation full power to act thereunder including the power to provide just compensation therefor, and the said corporation, by [fol. 6] its order of August 3, 1917, on behalf of the United States, took over all the property of the claimant in or under said contract, including the said ship under construction and all materials, machinery, equipment, outfit and commitments therefor, and all labor performed thereon necessary for its completion, meaning thereby everything in existence and as expressed in said order "required to complete the construction of said requisitioned ships under construction," as will more fully appear by reference to the order of W. L. Capps, General Manager, which reads as follows:

"Enclosure 'A'

"August 28, 1917.

To Carpenter-O'Brien Company:

Re New York Shipbuilding Corporation

"By virtue of an Act of Congress, approved June 15, 1917, entitled 'An Act making appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' and by authority delegated to the United States Shipping Board Emergency Fleet Corporation under Executive Order of the President, dated July 11, 1917, all power-driven cargo-carrying and passenger ships, above 2,500 tons d. w. capacity, under construction in your yard and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States.

"On behalf of the United States, by virtue of said act and said order, you are hereby required to complete the construction of said requisitioned ships under construction and will prosecute such work with all practicable dispatch.

"The compensation to be paid will be determined hereafter and will include, ships, material and contracts requisitioned.

"You will furnish immediately general plans and detail specifica- [fol. 7] tions of the ships requisitioned and copies of contracts and all supplemental agreements in relation thereto and full particulars as to owner, date of completion, payments made to date, amounts still due, and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts."

"You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this corporation.

"W. L. Capps, General Manager United States Shipping Board Emergency Fleet Corporation. Washington, D. C., August 3, 1917."

That said requisition order was fully complied with and all of the property of said owner, the claimant herein, hereinbefore described, was taken by the said United States Shipping Board Emergency Fleet Corporation for and on behalf of the United States, and was thereafter retained by and used for the purposes of the United States as provided by law. And that the said owner was thereby and thereafter deprived of all of its use and value. That said ship so taken was then under construction by said builder and thereafter was fully completed without change of plans or specifications from those set forth in the said construction contract as amended and supplemented, and that the said materials, equipment, outfit and supplies, and the said commitments and contracts for materials, equipment, outfit and supplies as described in said requisition order and paid for by the said owner and taken as aforesaid, were actually used in the construction and completion of said ship and were substantially sufficient to so construct, complete, equip and supply said ship as described in said plans and specifications as amended and supple-
[fol. 8] mented; that said ship so constructed and completed was of the size of 8,597 dead weight tons as hereinbefore set forth, and that in addition to the said sum of four hundred nineteen thousand, five hundred dollars ($419,500) so paid by said owner, the claimant herein, to the said builder, under the terms of said contract as amended and supplemented in order to fully comply with the terms and conditions thereof, and secure the construction, completion, equipment and supplying of said ship, said construction contracts further required that the owner should pay to said builder the sum of four hundred twelve thousand, one hundred thirty dollars ($412,130) as hereinbefore set forth; and the said owner, the claimant herein, was then and has ever since been fully prepared, able and ready to comply with said requirement and every other requirement on its part, as set forth in said contract so amended and supplemented.

6. That a fair and reasonable value of the said property so requisitioned and taken, and of which said owner was deprived on said 3d day of August, 1917, as aforesaid, was, at the rate of two hundred fifty dollars ($250) per ton for 8,597 dead weight tons, the sum of two million, one hundred forty-nine thousand, two hundred fifty dollars ($2,149,250) less the sum of four hundred twelve thousand, one hundred thirty dollars ($412,130) as aforesaid, (required to be paid by said owner to said builder under the provisions of said construction contract as amended and supplemented, in order to fully complete, supply and equip said ship in accordance with the terms and conditions of said construction contracts hereinbefore set forth), so that the total amount due to said claimant on the said 3d day of August, 1917, on account of the transactions hereinbefore set forth was the sum of one million, seven hundred thirty-seven thousand, one hundred twenty dollars ($1,737,120).

7. That said claimant has repeatedly attempted to secure an ad-
[fol. 9] justment of its claim against the United States with the United States Shipping Board Emergency Fleet Corporation, but has

failed to obtain any reasonable or just compensation; that theretofore, to wit, on the 28th day of January, 1920, the trustees of the United States Shipping Board Emergency Fleet Corporation offered the claimant in full satisfaction and settlement of its claim, the sum of four hundred forty-two thousand, six hundred eighty-three dollars and eighty-two cents ($442,683.82) as will more fully appear by reference to the following copy of said offer:

"Whereas, The Requisition Claims Committee has heretofore been appointed by the trustees of this corporation to investigate and hear claims arising out of acts of requisition by the Emergency Fleet Corporation, pursuant to authority conferred by the Emergency Shipping Fund provisions of June 15, 1917 (40 Stat., 182, ch. 29), and the Executive Order of the President dated July 11, 1917 (No. 2664); and

"Whereas, Said Requisition Claims Committee, in report dated 29th day of November, 1919, has made certain findings of fact with respect to property requisitioned from the Brooks-Scanlon Corporation and has made an award of just compensation for the property so taken in the amount of $177,230.44 and has further recommended the refund to the Brooks-Scanlon Corporation of $265,453.38 on account of progress payments heretofore made by that corporation to the shipbuilder in excess of cost of material requisitioned, and

"Whereas, The trustees, after due consideration of the report of said committee, approve the same; now, therefore, be it

"Resolved, That the report of said committee be and the same is hereby adopted and by reference made a part thereof, and that a copy of said report be spread upon the minutes of this meeting; further

[fol. 10] "Resolved, That the payment of said compensation and the refund of progress payments as set forth above, be and the same is hereby authorized upon the submission of proper releases in form satisfactory to the legal division."

And that thereafter on the 24th day of February, 1920, the said United States Shipping Board Emergency Fleet Corporation did issue its vouchers of payment of said date, one for the sum of $132,922.83 described therein for the "property requisitioned from the Brooks-Scanlon Corporation as follows:

"The power-driven, cargo-carrying ship about 2,500 tons d. w. capacity, under construction in the yard of the New York Shipbuilding Corporation designated as Hull No. 193, and certain materials, machinery, equipment, outfit, and commitments for material, machinery, equipment, and outfit necessary for the completion for said ship at that time." Payment made in accordance with resolution of the board dated 1/29/20."

75% of $177,230.44 ..... $132,922.83"

And another voucher for the sum of $199,090.04 described therein as:

"Refund to Brooks-Scanlon Corporation at 75% of $265,453.38 on account progress payments heretofore made by said corporation to the New York Shipbuilding Company in excess of cost of material requisitioned; for hull designated as Hull 193 under construction in the yard of the New York Shipbuilding Company. Payment made in accordance with resolution of the board dated 1/29/20.

75% of $265,453.38 ..... $199,090.04."

And that claimant received said vouchers and the sums named therein, and credited such amounts so paid upon the claim so due it.

That thereafter, on or about the 19th of May, 1920, the claimant [fol. 11] filed with the United States Shipping Board Emergency Fleet Corporation, an application in writing, requesting that said resolution of said Board of Trustees of said Fleet Corporation under and of the date of January 28, 1920, be amended in two particulars, to wit: First, that said resolution of award cover and include all items of property described in said requisition order of August 3, 1917, and in said voucher of said payment of said compensation of February 24, 1920, and the said property as herein described seized and taken from claimant by the United States under its authority as hereinbefore set forth.

Second. That the remaining part of said progress payment so remaining unpaid to claimant, namely, 25 per cent of the said sum of $265,463.38, or the sum of $66,373.34, withheld from claimant as aforesaid, be paid to claimant. That after consideration of said application, at a meeting of the Board of Trustees of said Emergency Fleet Corporation, held on the first day of June, 1920, the said Board of Trustees refused and denied the said requests of said claimant, contained in said application.

8. That the claimant has declined and does decline to accept such sums as compensation and has informed such trustees that the amount awarded was not satisfactory and was not the just compensation to which claimant was entitled, and requested the payment of seventy-five per cent (75%) of the amount of said award, reserving its right under the provisions of section 3 of the Act of April 22, 1918, to bring suit under section 24, paragraph 20, and section 145, of the Judicial Code for the difference between the amounts awarded and the amount which will make a just compensation for the property taken.

No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner [fol. 12] thereof, or interested therein; no assignment or transfer of this claim or of any part thereof or interest therein has been made. The claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets. The claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided or abetted or given encouragement to rebellion against the said government. The claimant is a citizen of the United States, and the claim-

ant claims the amount of one million, four hundred four thousand, one hundred eighteen dollars ($1,404,118).

Frederick C. Stevens, Jackson H. Ralston, Attorneys for Claimant.

DISTRICT OF COLUMBIA, ss:

Jackson H. Ralston being first duly sworn, deposes and says that he is the duly appointed attorney of the claimant, Brooks-Scanlon Corporation, and as such is authorized to make this affidavit, and is acquainted with the matters hereinbefore set forth; that he has read the foregoing petition, and the matters therein stated are true to the best of his knowledge, information and belief.

Jackson H. Ralston.

Subscribed and sworn to before me this 11th day of June, A. D. 1920. Stanley D. Willis, Notary Public, D. C.

[fol. 13] IN THE COURT OF CLAIMS

III. GENERAL TRAVERSE

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rul 34.

IN THE COURT OF CLAIMS

IV. HISTORY OF PROCEEDINGS

On February 6, 1923, this case was argued and submitted on merits.

On March 5, 1923, the Court filed an order filing tentative findings and setting the same for argument.

IN THE COURT OF CLAIMS

V. ARGUMENT AND SUBMISSION OF CASE

On March 26, 1923, this case was argued and submitted on tentative findings by Mr. Jackson H. Ralston, for the plaintiff, and by Mr. W. L. Cole, for the defendant.

[fol. 14] IN THE COURT OF CLAIMS

VI. **Findings of Fact and Conclusion of Law, Opinion of the Court by Hay, J., and Dissenting Opinion by Campbell, C. J.**—Entered April 23, 1923.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT

I

The plaintiff is a corporation duly organized and existing under the laws of the State of Delaware. On October 20, 1917, Scanlon and his associates acquired an interest in the Carpenter-O'Brien Co. and on December 8, 1917, the name of the Carpenter-O'Brien Co. was changed to the Brooks-Scanlon Corporation. The Carpenter-O'Brien Co. was the assignee of all the interests of the East Coast Transportation Co. in the contract hereinafter set forth between the East Coast Transportation Co. and the New York Shipbuilding Co., a corporation organized under the laws of the State of New Jersey, which latter company transferred all of its rights, property, and interest on December 16, 1916, to the New York Shipbuilding Corporation, a corporation organized and existing under the laws of the State of New York, included in which was the contract hereinafter set out.

II

On March 28, 1916, a contract in writing was entered into between the New York Shipbuilding Co. and the East Coast Transportation Co. whereby the said shipbuilding company agreed to construct in its yard at Camden, N. J., a certain steamship of about 8,100 tons d. w. t. according to the plans, specifications, and conditions described, being part of said contract, and as consideration to the builder the said East Coast Transportation Co. agreed to pay the sum of $595,000 in certain installments set forth in said contract, said ship when completed to be delivered to said East Coast Transportation Co., at the dock of the builder at Camden, N. J., on or before the 1st day of February, 1918. The contract also provided that alterations might be made in the construction of said ship by agreements in writing at a price agreed upon and settlements therefor to be made at the completion of the vessel. The contract also provided that every facility for inspection of workmanship and material and classification of the vessel should be provided for [fol. 15] the contractor by the builder with full authority to reject whatever should not conform to the provisions of the contract, the builder at its own expense at all times during the construction of said vessel to provide suitable insurance to an amount at least equal to payments made by contractor, and the builder to make good all defective workmanship and material which might develop within

three months after delivery of said vessel to the contractor. A copy of said contract is filed in the record of this case as plaintiff's Exhibit 4, and is made a part hereof by reference.

III

Between July 5, 1916, and May 25, 1917, changes in the construction of said ship were agreed to in the manner provided by the contract increasing the d. w. t. to 8,597 tons and the price for said ship to $811,130, and providing for some changes in payment of installments, and further providing that some of the changes should be submitted to the officials of the Bureau Veritas (the inspector). No changes were thereafter made in the plans and specifications before August 3, 1917.

IV

On May 24, 1917, the East Coast Transportation Co. by instrument in writing assigned and transferred all its right, title, and interest in and to the contract referred to to the Carpenter-O'Brien Co., owner of all the stock of the said East Coast Transportation Co., and the latter company was thereafter dissolved.

V

On July 11, 1917, the President, by virtue of authority vested in him by the act of Congress of June 15, 1917, by an Executive order delegated the powers conferred upon him by said act to the United States Shipping Board Emergency Fleet Corporation. Under the authority so conferred upon it the Shipping Board on August 3, 1917, served on the New York Shipbuilding Corporation notice and order of requisition, which is in part as follows:

"* * * All power-driven cargo-carrying and passenger ships, above 2,500 tons d. w. capacity, under construction in your yard, and certain materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States.

"On behalf of the United States, by virtue of said act and said order, you are hereby required to complete the construction and will prosecute such work with all practical dispatch.

"The compensation to be paid will be determined hereafter and will include ships, material, and contracts requisitioned.

"You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto, and full particulars as to the owner, date of completion, payments made to date, amounts still due, and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts."

[fol. 16] Among the vessels included within the above requisition order was the ship under construction referred to in these findings, known as hull 193, and afterwards as the ship M. J. Scanlon, and

being the same vessel which the New York Shipbuilding Co. agreed to build for the East Coast Transportation Co.

VI

On August 18, 1917, the Emergency Fleet Corporation issued and served on the East Coast Transportation Co., and on August 28, 1917, issued and served to the Carpenter-O'Brien Co., the following letters:

V.d.s p.38

"United States Shipping Board
"Emergency Fleet Corporation,
"Washington, August 28, 1917.

"To Carpenter-O'Brien Company:

"Re New York Shipbuilding Corporation

"By virtue of an act of Congress approved June 15, 1917, entitled 'An act making appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' and by authority delegated to the United States Shipping Board Emergency Fleet Corporation under Executive order of the President dated July 11, 1917, all power-driven cargo-carrying, and passenger ships above 2,500 tons d. w. capacity, under construction in your yard, and certain materials, machinery, equipment, outfit, and commitments for materials, machinery equipment, and outfit necessary for their completion are hereby requisitioned by the United States.

"On behalf of the United States, by virtue of said act and said order, you are hereby required to complete the construction of said requisitioned ships under construction and will prosecute such work with all practicable dispatch.

"The compensation to be paid will be determined hereafter and will include ships, material, and contracts requisitioned.

"You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto, and full particulars as to owner, date of completion, payments made to date, amounts still due, and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts.

"You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this corporation.

"(Signed) W. L. Capps, General Manager United States Shipping Board Emergency Fleet Corporation. Washington, D. C., August 3, 1917."

[fol. 17] This was accompanied by the following letter:

"United States Shipping Board,
"Emergency Fleet Corporation,
"Washington August 28, 1917.

"Carpenter-O'Brien Company,
"8 West 40th Street, New York City.

"DEAR SIRS:

"On August 3, 1917, the United States Emergency Fleet Corporation issued to the New York Shipbuilding Corporation the notice or requisition set forth in enclosure (a).

"In response to this communication the New York Shipbuilding Corporation, the shipbuilders, informed us that the East Coast Transportation Company, as owners, or representatives of owners, had entered into a contract with them for the following vessel:

"Hull No. 193; type, cargo; D. W. ton., 8,100; date of contract, 3-28-16 (assigned 5-24-17).

"Under date of August 23rd you advised that this contract had been assigned to you.

"The corporation's district officer having charge of vessels in the district in which the shipbuilders are located has been instructed to take charge, for the corporation, of the completion of vessels now under construction, and has been authorized temporarily to take over your local inspecting officers at their present compensation. Will you please inform the district officer, Mr. G. R. McDermott, at room 302, 1319 F St. NW., Washington, D. C., the names of your representatives and their compensation, sending a duplicate to this office. Your co-operation with the corporation is invited.

"The corporation will consider payments to the contractor accruing since the date of requisition, upon the receipt of proper vouchers and adequate information to be forwarded through its district officers.

"You are requested, as soon as possible, to report to the corporation a statement in detail of the payments already made by you on each ship named above prior to the date of the requisitioning, August 3, 1917. This statement should be accompanied by the original vouchers and receipts and should be verified under oath by the proper corporate officer of your company.

"It is the present intention of the corporation to reimburse you promptly, so far as funds are available, for the payments heretofore made to the shipbuilder if after investigation of data submitted by you such payments are found in order and in conformity with the contract requirements.

"At your further and early convenience you are requested to submit to the corporation a statement of such indirect expenditures as you have made on account of each vessel; for instance, the cost of superintendence, original design, interest on funds already paid, and the like. The matters mentioned will require careful audit, and in addition you may submit any other matters you deem pertinent.

"It will be perceived that the corporation presumes it is addressing this letter to the owners, or responsible representatives of the

owners, or persons entitled to receive compensation on account of the requisition of the vessels listed above. The corporation requests that there be included in your response to this letter all evidence [fol. 18] of ownership which is necessary to establish the right of those who are entitled to receive the compensation provided by law.

"The consummation of the orders herein and heretofore transmitted will be made the subject of later appropriate corporate action.

"Very truly, yours, W. L. Capps, General Manager."

"United States Shipping Board,
"Emergency Fleet Corporation,
"Washington, August 18, 1917.

"To East Coast Transportation Co.

"Re New York Shipbuilding Corporation

"By virtue of an act of Congress approved June 15, 1917, entitled 'An act making appropriations for the Military and Naval Establishments on ccount of war expenses for the fiscal year ending June thirtieth, nineteen hundred nd seventeen, and for other purposes,' and by authority delegated to the United States Shipping Board Emergency Fleet Corporation, under Executive order of the President dated July 11, 1917, all power-driven, cargo-carrying, and passenger ships, above 2,500 tons d. w. capacity, under construction in your yard, and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States.

"On behalf of the United States, by virtue of said act and said order, you are hereby required to complete the construction of said requisitioned ships under construction, and will prosecute such work with all practicable dispatch.

"The compensation to be paid will be determined hereafter and will include ships, materials, and contracts requisitioned.

"You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto, and full particulars as to owner, date of completion, payments made to date, amounts still due, and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts.

"You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this corporation.

"(Signed) W. L. Capps, General Manager United States Shipping Board Emergency Fleet Corporation. Washington, D. C., August 3, 1917."

VII

On August 16, 1917, the New York Shipbuilding Corporation forwarded to the Emergency Fleet Corporation a copy of the construction contract with plans and specifications, supplements and data pertaining thereto and the next day forwarded financial data, facts as to conditions of construction and percentage of completion. On [fol. 19] August 23, 1917, the Est Coast Transportation Co. notified the officers of the Emergency Fleet Corporation of the transfer of their interest in said ship to the Carpenter-O'Brien Co., the name of the designer of the vessel and of its local inspector, who was thereupon taken over by the Emergency Fleet Corporation to act for it in the same manner in the construction of such ship as he had acted for the Carpenter-O'Brien Corporation, dating such employment from August 3, 1917. On August 27, 1917, the Carpenter-O'Brien Corporation forwarded to the Emergency Fleet Corporation a list of payments to the shipbuilding company as paid under requirements of the construction contracts, which statement was identical with that theretofore presented by the shipbuilding company to the Fleet Corporation on August 16, 1917, and as set forth in the contract between the Emergency Fleet Corporation and the New York Shipbuilding Corporation, dated December 8, 1917.

VIII

On August 22, 1917, the following letter with inclosure was received by the New York Shipbuilding Co.:

"United States Shipping Board,
"Emergency Fleet Corporation,
"District Office No. 3,
"Washington, August 22, 1917.

"New York Shipbuilding Corporation,
Camden, N. J.

"GENTLEMEN:

"Enclosed please find copy of letter addressed to me by Admiral W. L. Capps, general manager of the Emergency Fleet Corporation. Will you kindly read this carefully and govern yourself accordingly?

"Promptness in reply will be much appreciated.

"Yours faithfully, (Signed) Geo. R. McDermott, District Officer."

"United States Shipping Board,
"Emergency Fleet Corporation,
"Washington, August 22, 1917.

"Mr. G. R. McDermott,
"Room 302 1319 F Street N. W.,
Washington, D. C.

"DEAR SIR:

Referring to the vessels under construction in the yard of New York Shipbuilding Corporation, Camden, N. J., requisitioned under

the corporation's order of August 3rd, precedent to the final examination of the contract for the vessels in question, you are requested to inform the shipbuilder as follows:

"The ships now under construction at your plant and referred to above having been requisitioned by the duly authorized order of this corporation and title thereto taken over by the United States, and an order having been placed with you by due authority to complete the construction of said ships with all practicable dispatch, you are further ordered by the President of the United States, represented [fol. 20] by this corporation, to proceed in the work of completion heretofore ordered, in conformity with the requirements of the contract, plans, and specifications under which construction proceeded prior to the requisition of August 3, 1917, in so far as the said contract describes the ship, the materials, machinery, equipment, outfit, workmanship, insurance, classification, and survey thereof, including the meeting of the requirements of the said contract and all tests as to efficiency and capacity of the ship on completion, and in so far as the contract contains provisions for the benefit and protection of the person with whom the contract was made, but not otherwise.

"All work will proceed under the inspection of such persons as have been or may hereafter, from time to time, be designated by this corporation for that purpose.

"For the work of completion heretofore and herein ordered the corporation will pay to you amounts equal to payments set forth in the contract and not yet paid: Provided, That on acceptance in writing of this order you agree that on final acceptance of the vessel to give a bill of sale to the United States in satisfactory form, conveying all your right, title, and interest in the vessel, together with your certificate that the vessel is free from liens, claims or equities, with the exception of those of the owner, and then only to those set forth in the contract. Compensation to the shipbuilder for expedition and for extra work will, when deemed appropriate, be made the subject of a subsequent order.

"This order applies only to vessels actually under construction and in accepting it the corporation expects you to inform it of the actual stage of construction of each vessel or the part to be assembled therein on the date of requisitioning, August 3, 1917. The corporation reserves the right to decide whether or not a vessel was actually under construction on August 3, 1917, on consideration of the ascertained facts.

"In replying to this communication, please arrange to specify separately the vessels to which this order refers, and refer to the corresponding contract in sufficient terms for identification of it.

"Please furnish a copy of this to New York Shipbuilding Corp., and ask for an early reply.

"Very truly, yours, (Signed) W. L. Capps, General Manager."

IX

On September 20, 1917, the New York Shipbuilding Corporation wrote the following letter to the Emergency Fleet Corporation:

September 20, 1917.

"United States Shipping Board
"Emergency Fleet Corporation,
"Admiral W. L. Capps, General Manager,
"Washington, D. C.

"DEAR SIR:

"Referring to the order dated August 22, 1917, made by United States Shipping Board Emergency Fleet Corporation, and delivered to this company, we beg to say:

"We understand that by the act of Congress of June 15, 1917, entitled 'An act making appropriations for the Military and Naval [fol. 21] Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes,' and the Executive order dated July 11, 1917, made by the President with respect to said act, and transmitted to us by the Emergency Fleet Corporation under date of August 3, 1917, we are under obligation to comply with the order of the Emergency Fleet Corporation dated August 3, 1917, requisitioning ships at this company's plant.

"This corporation, therefore, accepts United States Shipping Board Emergency Fleet Corporation's order dated August 22, 1917, for the completion of the vessels under contract in this yard on August 3rd, 1917, known as hull No. —, and agrees that, upon the completion and acceptance of said vessels and upon complete payment United States Shipping Board Emergency Fleet Corporation, together with such additional compensation as may be agreed upon, this company will execute and deliver to the United States of America a bill of sale conveying all this company's right, title, and interest in the vessels without prejudice to any claim of the person or corporation who originally contracted for the construction of said vessels, and those claiming rights under such original contractor, together with our certificate that the vessels are free from liens, claims, or equities except such liens, claims, or equities as may be asserted by, or exist in favor of, the person or corporation who originally contracted for the construction of the vessels, and those claiming rights under such original contractor.

"Yours, very truly, —— ——, Vice President."

X

On September 13, 1917, the following telegram was received by the New York Shipbuilding Corporation: "Do not accept further payment from former owners on account of requisitioned ships. This is mandatory. George R. McDermott, District Officer." Like verbal notice was given by Admiral Bowles to Scanlon. After this date the plaintiff made no further payments to the New York Shipbuilding Co. on account of hull 193 under the provisions of the contract.

XI

The plaintiff was never in default in the performance of its part of the requirements of the construction contract. The shipbuilding

company on its part was ready and willing to perform on its part all the requirements of said contract to its completion. At that time the plaintiff had on deposit in various solvent banks the sum of $238,730 deposited and held solely to meet payments by it to the builder as required in said contract, which sum of money was sufficient to pay all of the instalments set forth in said contract.

XII

Immediately after the execution of the construction contract the New York Shipbuilding Co., in its own name and on its own credit, ordered all of the material and equipment for the construction and outfitting of said vessel for which sufficient data then existed, and [fol. 22] before August 3, 1917, by various commitments completed its orders for substantially all of the material, equipment, and outfit needed as provided by the contract, supplements thereto, and plans and specifications, all of which were duly delivered to it and used in the construction and completion of said ship. The title to these materials was in the New York Shipbuilding Corporation, on August 3, 1917, the date of the requisition order, and the plaintiff never had nor claimed any title in and to these materials either before or after the date of the requisition order. The orders and commitments were sufficient to complete said ship, and all materials, machinery, and outfit covered thereby were duly delivered and used in the construction and completion of such ship at the prices fixed in such orders and commitments, and no further material was purchased subsequent to August 3, 1917, except for the sum of $31,000 for material used for the construction ordered for the military protection of the vessel. Representatives of the Fleet Corporation were present and informed of these facts.

XIII

Up to and including August 3, 1917, between 35 and 40 per cent of the necessary material, machinery, outfit and equipment, valued at about the sum of $118,000, and labor at about the amount of $24,000 had been delivered to the builder ready for use and used in the construction of the said ship, and on that day the said ship was about 19 per cent completed. Said ship was thereafter substantially completed by the use of all such material, equipment, and supplies, and was launched on July 6, 1918, and delivered to the United States on September 20, 1918.

XIV

The East Coast Transportation Co. made a contract with the Bureau Varitas for its inspection and classification service, which contract was continued by its successors, and said service was furnished from the commencement of the construction of said ship to its completion. The Emergency Fleet Corporation notified the Carpenter-O'Brien Co. that the inspection would be continued by the Bureau Veritas. What amount was paid by the East Coast Transportation Co., the Carpenter-O'Brien Co., and the plaintiff to the Bureau Veritas before August 3, 1917, does not appear in the record.

XV

The plans and specifications described in and made a part of the contract and the supplements thereto were ordered and paid for by the plaintiff and its assignors and were used after August 3, 1917, for the benefit of the Emergency Fleet Corporation in the construction of and completion of said ship. The value of the plans and specifications was about 2½ per cent of the contract price or $20,277.25.

XVI

On December 8, 1917, the Emergency Fleet Corporation made a contract with the New York Shipbuilding Corporation and the [fol. 23] American International Corporation relative to the completion and disposal of hull 193, which contract, or the part of it pertinent to this suit, is as follows:

* * * * * * *

Statement of premises.—On and prior to August 3, 1917, the Shipbuilding Corporation was constructing under private contract with the corporations named below (hereinafter called "former owners") ships bearing the hull numbers of the type and for the contract prices set opposite their respective names:

Hull No.	Type	Corporation	Contract price (max.)
174	Tanker.....	Standard Transportation Co.....	$875,000
175	Tanker.....	Standard Transportation Co.....	875,000
176	Collier.....	Darrow Mann Co.....	698,900
182	Coastwise.....	Transportation Co.....	507,500
183	Collier.....	Pocahontas Fuel Co.....	369,000
184	Collier.....	Darrow Mann Co.....	515,000
189	Tanker.....	Gulf Refining Co.....	640,000
190	Tanker.....	Petroleum Transportation Co....	1,010,000
193	Freighter.....	Carpenter-O'Brien Co.....	831,630
196	Tanker.....	Gulf Refining Co.....	1,045,000

Due to war conditions, such contract prices have proved and will prove to be less than the actual cost of constructing such ships. On August 3, 1917, all of such ships, together with the materials assembled therefor, were requisitioned by the Fleet Corporation, acting in accordance with the provisions of the urgent deficiency act of June 15, 1917, and the Executive order of July 11, 1917. The Shipbuilding Corporation by such requisition was directed to complete such ships on behalf of the United States.

The parties hereto desire to fix the just compensation to be paid to the Shipbuilding Corporation in accordance with the provisions of such urgent deficiency act, and to that end the Fleet Corporation is willing to increase such contract prices, provided the former owners of said ships, respectively, or if any former owner declines, the International Coropration, shall agree to accept retransfer to them, respectively, or to the International Corporation, as the case

may be, of said ships upon completion, and, upon such retransfer, repay to the Fleet Corporation its investment as hereinafter set forth, with respect to said ships, including extra costs of all sorts, and shall accept the charter rate prescribed by the United States Shipping Board and other conditions, all in accordance with the provisions of this agreement and agreements to be executed, forms of which are hereto annexed and marked "Exhibits A, B, and C."

* * * * * * *

Agreement.—Now, therefore, for and in consideration of the premises and of the mutual agreements hereinafter contained, it is hereby agreed as follows:

I

The Shipbuilding Corporation agrees to complete said hulls Nos. 174, 175, 176, 182, 183, 184, 189, 190, 193, and 196 in accordance [fol. 24] with the specifications annexed to the respective contracts under which such hulls were being constructed for the former owners prior to August 3, 1917, but will comply with all orders as to alterations in the construction or equipment thereof given by the Fleet Corporation or its duly authorized officers.

The Shipbuilding Corporation agrees to proceed with such completion of such ships with all due expedition, and to that end agrees that the Shipbuilding Corporation will not, during the construction of said ships, take any additional contracts for other ships from parties other than the United States Navy, which will interfere with such expedition.

II

The Fleet Corporation hereby agrees to pay to the Shipbuilding Corporation as just compensation for the completion of said ten ships, hulls Nos. 174, 175, 176, 182, 183, 184, 189, 190, 193, and 196 the entire cost of construction of said ships, figured from the commencement by the Shipbuilding Corporation of the construction of said ten ships up to the times of completion thereof respectively, and in addition thereto with respect to each ship ten dollars ($10) per dead-weight ton for profit. There shall be credited, however, in favor of the Fleet Corporation all sums heretofore received by the Shipbuilding Corporation on account of the construction of such ten ships respectively, either from the former owners or from the Fleet Corporation. A statement of the amounts so received by the Shipbuilding Corporation as to each such ship is hereunto annexed and marked Exhibit D. As construction progresses the Shipbuilding Corporation shall deliver monthly to the Fleet Corporation cost statements as to each such ship, covering the construction costs with respect thereto, so far as ascertained, and the Fleet Corporation shall pay to the Shipbuilding Corporation on or before the 15th day of each month the costs incurred during the preceding calendar month. The Fleet Corporation shall pay said profit of ten dollars ($10) per dead-weight ton; three dollars ($3) per estimated dead-weight ton at the time of laying the keel of each said ship; four dollars ($4) per

estimated dead-weight ton at the time of launching of each ship; and three dollars ($3) per estimated dead-weight ton at the time of delivery of the ship by the Shipbuilding Corporation.

III

A determination of the costs of said ships to date with payments of said profit in accordance with the stage of completion of each ship, as aforesaid, shall be made as soon as possible after date hereof, after proper audit by the Fleet Corporation. The costs of each ship shall be stated separately. The Fleet Corporation shall have free access to the books and records and contracts of the Shipbuilding Corporation for the purpose of determining such costs. Final determination of the amount of the Shipbuilding Corporation's said profit shall be made after the determination of the actual dead-weight tonnage of each ship, and any necessary adjustments shall then be made. Costs shall be determined as actual costs are defined in the form of agreement constituting Exhibit C hereto attached, relating to the construction of the three transports.

* * * * * * *

[fol. 25]

X

The Fleet Corporation, in accordance with the provisions of the said urgent deficiency act of June 15, 1917, hereby agrees to indemnify and save harmless the Shipbuilding Corporation from any and all loss or liability occasioned by reason of said requisition order of August 3, 1917, or any subsequent acts or orders given by the Fleet Corporation arising out of claims of the former owner or owners or anyone claiming under them.

* * * * * * *

Statement of amount received by New York Shipbuilding Co., either from "former owners" or from United States Shipping Board Emergency Fleet Corporation, on account of construction of ships, as per hull numbers, as follows:

Hull No.	By former owners	By E. F. Corp.	Total paid to date
174} 175}	$612,500.00	$525,000.00	$962,500.00
176	663,900.00	.....	663,900.00
182	237,500.00	.....	237,500.00
183	181,000.00	82,500.00	263,500.00
184	496,500.00	.....	496,500.00
189	328,889.48	122,697.95	451,587.43
190	190,000.00	105,000.00	295,000.00
193	419,500.00	.....	419,500.00
196	172,452.69	72,063.52	244,516.21
	3,302,242.17	907,261.47	4,034,503.64

XVII

In accordance with the provisions of the statute the plaintiff filed its claim for the payment of just compensation with the Emergency Fleet Corporation for the property which it alleged the said corporation had requisitioned from it on August 3, 1917. On January 23, 1920, the Emergency Fleet Corporation adopted a resolution awarding to the plaintiff as just compensation the sum of $442,683.82. The plaintiff being dissatisfied with this award refused to accept the same and so notified the Emergency Fleet Corporation, and on February 24, 1920, the defendant paid to the plaintiff the sum of $332,012.87, that sum being 75 per cent of said award.

The award made by the Emergency Fleet Corporation to the plaintiff as just compensation for property requisitioned on August 3, 1917, was made up of two items, to wit, $177,230.44, which was computed to be the value of the materials, equipment, and machinery which were in the yard of the New York Shipbuilding Co. at the time of the requisition, and which materials, etc., were in fact the property of the New York Shipbuilding Corporation. The second item was the sum of $265,453.38, which sum was on account of progress payments made by the plaintiff and its assignors to the New York Shipbuilding Co. in excess of cost of material requisitioned. [fol. 26] The plaintiff and its assignors paid to the New York Shipbuilding Corporation in cash $239,509, in notes for which it has paid $180,000, and payments which it has made of interest on notes $28,433.33—in all, $447,933.33. The plaintiff also paid the sum of $5,500 to architects. The plaintiff also furnished plans and specifications of the value of $20,277.25, making in all the sum of $473,710.58. It has been paid by the defendants the sum of $332,012.87.

XVIII

At the time the ship under construction was requisitioned by the United States the value of such ships was $200 per dead weight ton. The value of such ships on February 1, 1918, the date on which the said ship was to have been completed, was $200 per dead weight ton. If the ship had been completed on August 3, 1917, its value would have been $1,719,400 on that day. The contract price for building said ship was $831,600. The contract was 19 per cent completed on that day, and thereafter the defendant paid for the construction of said ship the sum of $412,130. The plaintiff had paid the sum of $453,433.33, making the sum of $865,563.33, the amount which was paid for the construction of the ship. That amount deducted from the value of the completed ship would leave the sum of $853,836.67.

Conclusion of Law

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is entitled to recover of and from the United States the sum of $473,710.58, less the sum of $332,012.87 which it has already received, and in addition thereto, as a

part of the just compensation to which it is entitled, the interest on $445,277.25 from August 3, 1917, to February 24, 1920, which amounts to the sum of $68,350.06, and the interest on $113,264.38, from February 24, 1920, to April 23, 1923, which amounts to the sum of $21,501.35.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of two hundred and thirty-one thousand five hundred and forty-nine dollars and twelve cents ($231,549.12).

Opinion

Hay, Judge, delivered the opinion of the court:

This is a suit brought by the Brooks-Scanlon Corporation against the United States to recover the sum of $1,275,923.07, and claim is also made for interest on that amount at 6 per cent per annum from February 24, 1920, to date of judgment.

On March 28, 1916, a contract in writing was entered into between the New York Shipbuilding Corporation and the East Coast Transportation Co., whereby the shipbuilding company agreed to build in its yard at Camden, N. J., a certain steamship of about 8,100 tons d. w. t. according to plans, specifications, and conditions described, and the East Coast Transportation Co. agreed to pay the sum of $595,000 to the shipbuilding company in certain installments set forth in the contract. The ship was to be delivered to the East Coast Transportation Co. on or before February 1, 1918. Between July 5, 1916, and May 25, 1917, changes in the construction of the [fol. 27] ship were agreed to increasing the d. w. t. to 8,597 tons and the price for said ship to $811,130.

On May 24, 1917, the East Coast Transportation Co., by instrument in writing, assigned and transferred all its right, title, and interest in and to the contract above referred to to the Carpenter-O'Brien Corporation, owner of all the stock of the East Coast Transportation Co., and the latter company was thereafter dissolved.

On October 20, 1917, Scanlon and his associates acquired an interest in the Carpenter-O'Brien Corporation, and on December 8, 1917, the name of the Carpenter-O'Brien Corporation was changed to the Brooks-Scanlon Corporation.

On December 16, 1916, the New York Shipbuilding Company transferred all of its rights, property, and interest to the New York Shipbuilding Corporation, organized and existing under the laws of the State of New York, included in which transfer was the contract for the building of the ship for the East Coast Transportation Co., referred to above.

On July 11, 1917, the President, by virtue of authority vested in him by the act of Congress of June 15, 1917, delegated his powers to the United States Shipping Board Emergency Fleet Corporation, and under the authority so conferred the Shipping Board on August 3, 1917, served on the New York Shipbuilding Corporation an order requisitioning "all power-driven cargo-carrying and passenger ships above 2,500 tons d. w. capacity under construction in your yard,

and certain materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States." And by said order the shipbuilding company was required to complete the construction with all practical dispatch. Among the vessels under construction in the yard of the New York Shipbuilding Corporation and included in the requisition order was the ship known as hull 193, and was the same ship which the shipbuilding corporation had agreed to construct for the East Coast Transportation Co. The Shipping Board sent to the East Coast Transportation Co. a letter in which was incorporated a copy of the requisition order which it had sent to the New York Shipbuilding Corporation.

On August 28, 1917, the Shipping Board sent to the Carpenter-O'Brien Corporation its order of requisition to the New York Shipbuilding Corporation, and on the same day wrote a letter to the Carpenter-O'Brien Corporation. That letter set out that the Shipping Board had been advised by the New York Shipbuilding Corporation that the contract for the building of hull 193 had been entered into with it by the East Coast Transportation Co., and that the Carpenter-O'Brien Corporation on August 23, 1917, had advised the Shipping Board that the contract for the construction of the vessel had been assigned to the Carpenter-O'Brien Corporation. The letter of the board contained the following paragraphs, among others:

"The corporation will consider payments to the contractor occurring since the date of requisition, upon the receipt of proper vouchers and adequate information to be forwarded through its district officers. You are requested, as soon as possible, to report to the corporation a statement in detail of the payments already made by you on each ship named above prior to the date of the requisitioning, August 3, 1917. This statement should be accompanied by the original [fol. 28] voucher and receipts and should be verified under oath by the proper corporate officer of your company.

"It is the present intention of the corporation to reimburse you promptly, so far as funds are available, for the payments heretofore made to the shipbuilder.

"At your further and early convenience you are requested to submit to the corporation a statement of such indirect expenditures as you have made on account of each vessel.

"It will be perceived that the corporation presumes it is addressing this letter to the owners, or responsible representatives of the owners, or persons entitled to receive compensation on account of the requisition of the vessels listed above. The corporation requests that there be included in your response to this letter all evidence of ownership which is necessary to establish the right of those who are entitled to receive the compensation provided by law."

The Carpenter-O'Brien Corporation forwarded to the Shipping Board a list of payments which had been made by it to the shipbuilding corporation.

The title to the uncompleted ship (hull 193) and the materials which had been delivered or ordered for its completion was in the

New York Shipbuilding Corporation on August 3, 1917, the date of the requisition order. On that date the said ship was about 19 per cent completed; and was delivered completed to the United States on September 20, 1918.

On December 8, 1917, the Emergency Fleet Corporation made a contract in writing with the New York Shipbuilding Corporation for the completion and disposal of hull 193, and other hulls set forth in the said contract; hull 193 is the ship in controversy here. The provisions of this contract are set forth in the findings of fact in so far as they are pertinent to the issues in this case.

The plaintiff claims that the United States requisitioned and took its contract with the New York Shipbuilding Corporation, and that it is entitled to recover from the United States the value of that contract at the time of the taking. It claims that the value of the ship measures the value of the contract; and it is shown by the evidence that at the time of the alleged taking of the contract the value of such ships was $200 per dead weight ton. The ship when completed was 8,597 tons. The value of the ship was therefore $1,719,400. In other words, the plaintiff claims that its contract was worth the value of the ship when completed.

The questions to be determined are: Was there a requisitioning or taking of the contract by the United States; and if there was, what was the value of such contract at the time of the taking? In this case the President, through the Emergency Fleet Corporation, which acted by virtue of the authority vested in it by him, requisitioned certain ships under construction in the yard of the New York Shipbuilding Corporation. The power to make such requisition was given to the President by the act of Congress of June 15, 1917, while this country was engaged in war with Germany. That part of the act with which we are concerned in this case is as follows:

"(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

[fol. 29] "(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

"Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person." (40 Stat. 182.)

Under the provisions of this statute the Emergency Fleet Corporation requisitioned all ships under construction in the plant of the New York Shipbuilding Corporation on August 3, 1917. The language of the requisition order was as follows:

"By virtue of an act of Congress approved June 15, 1917, * * * and by authority delegated to the United State Shipping Board Emergency Fleet Corporation under Executive order of the Presi-

dent dated July 11, 1917, all power-driven cargo-carrying and passenger ships above 2,500 tons d. w. capacity, under construction in your yard, and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States."

The intent and purpose of the Shipping Board was, therefore, to requisition ships under construction, which was done in unmistakable language. It is admitted that the ships under construction, the materials, and so forth in the yard of the New York Shipbuilding Corporation were the property of that corporation, and the title to that property was in the shipbuilding corporation alone. Among the ships under construction so requisitioned was hull 193, which the shipbuilding corporation was building for the Carpenter-O'Brien Corporation, but it is not contended by the plaintiff that it had any title to or interest in said ship or the materials for its completion. All the interest it had was the right to the delivery of the ship when it should be completed. It follows that the United States did not take or requisition the ship or materials from the Carpenter-O'Brien Corporation, nor did the United States take over or requisition the contract which the Carpenter-O'Brien Corporation had with the shipbuilding corporation.

It was made plain to the Carpenter-O'Brien Corporation that the United States did not intend to requisition the contract, for on August 28, 1917, after notifying the Carpenter-O'Brien Corporation that it had taken over and requisitioned this ship from the shipbuilding corporation, the Shipping Board by letter of that date stated what its intention was. A copy of said letter is set forth in full in Finding VI. As further evidence showing the intention of the Shipping Board, reference is made to the letter of the board to G. R. McDermott, its officer, and which was communicated to the shipbuilding corporation. A copy of this letter is set forth in Finding VIII. And as final evidence that the United States did not requisition the contract, and never intended to, the United States entered into a contract with the shipbuilding corporation for the completion of all ships under construction in its yard, included in which ships was hull 193, thereby making its own contract for the completion of this ship. This contract is set out in Finding XVI. [fol. 30] It is true that the plaintiff by reason of the requisitioning of the ship by the United States was deprived of the right to have delivered to it the ship when completed.

But there has been in this case no direct taking of the contract. The injury inflicted upon the plaintiff is a consequential injury resulting from the exercise of a lawful power in the requisitioning of the ship under construction. The requisitioning has worked indirectly harm and loss to the plaintiff, but not such harm and loss as can be held to obligate the Government to pay for it. The action of the Government may have destroyed the worth of the contract, but the law affords no remedy. The Government by requisitioning the subject matter of the contract does not thereby take the contract.

The subject matter in this case was the ship under construction, and that was what the Government requisitioned, not the contract which was the agreement and obligation to perform. The performance of the contract in this case was frustrated and not appropriated. "Frustration and appropriation are entirely different things." Omnia Commercial Company v. United States, decided April 9, 1923, by Supreme Court of the United States.

Moreover, the building of the ship for the plaintiff was made impossible, and the performance of the contract to build was stopped by the requisition. Its performance was made impossible by an act of the Government. The basis of the mutual agreement between the parties was that the ship would be completed; and it must be held that the contract was entered into on an implied condition that if before the contract was completed its completion was rendered impossible by an act of Government the contract, as between the parties to it, would be at an end, and the parties to it would be absolved from liability under it. Texas Company v. Hogarth Shipping Co., 256 U. S. 619, 631, cited in the Omnia case, supra.

The President, in taking the ship, exercised a power conferred upon him by Congress. If in exercising this power the plaintiff was deprived of any right it may have had under a contract had by it with the person from whom the ship under construction was taken, that does not impose upon the Government an obligation to pay the plaintiff for its right. The deprivation of the right of the plaintiff to have its ship built and delivered to it by the New York Shipbuilding Corporation was incidental to the taking of the ship from its builder, and was not a taking of something for public use. The war powers of the Government were exercised in time of war for the public good and the injury complained of is only incidental to their exercise, and no obligation rests upon the Government to pay for the injury done. In exercising the war powers conferred upon it by the Constitution Congress has legitimately exercised them in the act of June 15, 1917; and having legitimately exercised them the injury to the plaintiff is only incidental to their exercise, and it is not entitled to compensation. Morrisdale Coal Co. v. United States, 55 C. Cls. 310, affirmed by Supreme Court, 259 U. S. 188; Pine Hill Coal Co. v. U. S., 55 C. Cls. 433, affirmed by Supreme Court, 259 U. S. 191.

The plaintiff presented its claim to the United States Shipping Board Emergency Fleet Corporation for the payment of just compen- [fol. 31] sation under the provisions of the statute, and on January 23, 1920, the Emergency Fleet Corporation adopted a resolution awarding to the plaintiff as just compensation the sum of $442,683.82. The plaintiff being dissatisfied with this award refused to accept it and so notified the Emergency Fleet Corporation, and on February 24, 1920, the defendant paid to the plaintiff the sum of $332,012.87, that sum being 75 per cent of said award. It appears from the evidence in this case that the award of just compensation made by the Shipping Board to the plaintiff was made up of two items, to wit: The sum of $265,453.38, which sum was on account of progress payments made by the plaintiff and its assignors to the New York Shipbuilding Corporation; and the second item was the

sum of $177,230.44, which was computed to be the value of the materials, equipment, and machinery which were in the yard of the New York Shipbuilding Corporation at the time of the requisition. The materials, etc., were not the property of the plaintiff but belonged to the shipbuilding company, and should not therefore have been taken into account in arriving at the compensation due the plaintiff.

The evidence in the case, however, discloses that the plaintiff and its assignors had paid to the New York Shipbuilding Corporation the sum of $447,933.33 on the construction of the ship before August 3, 1917, the date of the requisition; and the United States received the benefit of this sum when it settled with the shipbuilding corporation upon the completion of the ship. The United States also got the benefit of the sum of $5,500 paid to architects by the plaintiff, and of the sum of $20,277.25 the value of the plans and specifications paid for by the plaintiff, making in all the sum of $473,710.58, which was paid out by the plaintiff for the construction of said ship. Of this amount the plaintiff has been paid the sum of $332,012.87, leaving the sum of $141,697.71 still unpaid.

When the Emergency Fleet Corporation requisitioned the ship under construction which the shipbuilding corporation had contracted to build for the Carpenter-O'Brien Co., it also took and appropriated under its order of requisition the payments which the Carpenter-O'Brien Co. had made to the shipbuilding corporation, and also took over the plans and specifications which had been paid for by the last-named company. This is evidenced by the letter of August 28, 1917, written by the fleet corporation to the Carpenter-O'Brien Co., and by the following clause in the contract which the United States made with the shipbuilding corporation for the completion of the ship: "There shall be credited, however, in favor of the Fleet Corporation all sums heretofore received by the shipbuilding corporation on account of the construction of such 10 ships respectively, either from the former owners or from the Fleet Corporation." The record discloses that the sums paid by the Carpenter-O'Brien Co. were credited in favor of the Fleet Corporation, and were therefore taken and appropriated by the Fleet Corporation for the benefit of the United States, which was done by vitue of the provisions of the act of June 15, 1917. And the plaintiff is entitled to recover the amounts of money requisitioned and appropriated by the United States. The plaintiff claims that it is entitled to interest on the money requisitioned as a part of the just compensation to which it is entitled. The act providing for just compensation makes no provi-
{fol. 32} sion in respect of interest. 40 Stat. 183. The plaintiff's right in this case does not depend on contract, express or implied. This suit is a part of the authorized procedure initiated by the United States under the provisions of the statute cited above. The plaintiff was not satisfied with the amount fixed by the President and brought this suit. The question here is whether the payment at a subsequent date of the amount of money requisitioned is sufficient to constitute just compensation, and shall interest on the amount of money requisitioned be considered as a part of the just compensation to which

the plaintiff is entitled? The answer to this question is found in the opinion of the Supreme Court of the United States in the case of Seaboard Air Line Ry. Co. et al. v. United States, decided March 5, 1923. Mr. Justice Butler, speaking for the court, says: "The requirement that 'just compensation' shall be paid is comprehensive and includes all elements, and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation." This court is of opinion that the allowance of interest is necessary in order that the plaintiff shall have the "just compensation" to which it is entitled. Seaboard Air Line Ry. Co. v. United States, supra.

The plaintiff is therefore entitled in addition to the sum of $141,697.71 to have interest on $445,277.25 from August 3, 1917, to February 24, 1920, which amounts to the sum of $68,350.06, and interest on $113,264.38 from February 24, 1920, to April 23, 1923, which amounts to the sum of $21,501.35. The judgment for the plaintiff will therefore be the sum of $231,549.12.

Graham, Judge; Downey, Judge; and Booth, Judge, concur.

CAMPBELL, Chief Justice, dissenting:

A contract is property for which compensation must be made when taken for public use. Omnia Commercial Co. v. United States, — U. S. —, decided April 9, 1923; Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 690; Cincinnati v. L. & N. R. R. Co., 223 U. S. 390, 400. In the Omnia Commercial Company case the appellant owned a contract by which it acquired the right to purchase a large quantity of steel plate from the Allegheny Steel Company. The Government requisitioned the steel company's entire production of steel plate for the year 1918 and directed that company not to comply with the terms of appellant's contract. Appellant brought suit in the Court of Claims, alleging that the Government's action was a taking of its property and that it was entitled to just compensation by virtue of the fifth amendment to the Constitution. The Supreme Court say: "The contract in question was property within the meaning of the fifth amendment * * * and if taken for public use the Government would be liable." See also upon the question of requisitioning contracts Russell Motor Car Co. v. United States, — U. S. —, decided April 9, 1923 (57 Ct. Cls. 464).

It is not questioned that there are implied conditions under which contracts are made that may excuse performance or even produce their dissolution. Texas Co. v. Hogarth Shipping Co., 256 U. S. 619, 630. Nor is it denied that the subject matter of a contract is not the contract itself, so that one may be taken and the other left. [fol. 33] The question therefore is, Was there a taking, an appropriation by the Government, of plaintiff's contract? The answer is to be found not alone in the communications of the Government's authorized agent in the premises but in the direct effect of its action as well. It is undisputed that plaintiff had a contract obligating the shipbuilder to construct and deliver a vessel according to specific plans and specifications upon definite terms; that the shipbuilder

could have delivered the ship; that plaintiff would have paid for it; and neither the plaintiff nor the shipbuilder was in default in any particular when the requisition order was issued. The vessel in its uncompleted condition belonged to the builder. All the plaintiff had was a contract, under the terms of which it had made substantial payments to the builder. This was the status when, under date of August 3, 1917, the agency duly authorized to act for the Government served notice on the builder that the United States "requisitioned" all ships above 2,500 tons dead-weight capacity "under construction" in its yard, including material, machinery, equipment, and outfit necessary for their completion, and that the builder was required to complete the construction and to prosecute such work with all practical dispatch. The notice stated that "the compensation to be paid will be determined hereafter and will include ships, material, and contracts requisitioned." The builder was accordingly called upon to furnish immediately general plans and detail specifications of ships requisitioned, and copies of contracts, with full particulars as to the owner, date of completion, payments made, amounts still due, and all other information necessary to a determination of the obligations in taking over "these ships and contracts." On August 22 Mr. McDermott, who was acting for the Fleet Corporation, was directed to inform the shipbuilder to proceed in the work of completion in conformity "with the requirements of the contract, plans, and specifications under which construction proceeded prior to the requisition of August 3, 1917, in so far as the said contract described the ship, the materials, * * * and survey thereof, including the meeting of the requirements of the said contract and all tests * * * on completion, and in so far as the contract contains provisions for the benefit and protection of the person with whom the contract was made, but not otherwise."

Here we find a recognition of the contract and a direction to proceed according to its provisions. The notice, however, went further. The builder was informed that "for the work of completion heretofore and herein ordered the corporation will pay to you amounts equal to payments set forth in the contract and not yet paid." The Fleet Corporation made it plain that the order applied only to vessels actually under construction. These were requisitioned, they were to be completed according to the provisions of the contracts under which they had proceeded to their stage of completion, and payment was to be made upon the basis of the balance due under the contracts. When the Government's requisition issued and required completion for its own benefit, agreeing to pay therefor the contract price, diminished, however, by the amount of the paymnets plaintiff had made, it is conceded that the uncompleted vessel was taken. But what became of the plaintiff's payments and of the obligation of the contract? In answering this question, it is im- [fol. 34] portant to note that a contract was made between the Fleet Corporation and the builder, which recited that on and prior to August 3 the builder was constructing under private contract with parties called "former owners" the ship in question at designated "contract prices," and that due to the war conditions "such contract

prices have proved and will prove to be less than the actual cost of constructing such ships," and, among other things, stipulated that the builder would complete the vessel in accordance with "the specifications annexed to the respective contracts under which such hulls were being constructed for the former owners prior to August 3," but would comply with all orders as to alterations given by the Fleet Corporation. In payment the builder was to receive the entire cost of the construction, and in addition thereto "ten dollars per dead-weight ton for profit," but it was added: "There shall be credited, however, in favor of the Fleet Corporation all sums heretofore received by the shipbuilding corporation on account of the construction of such ten ships respectively, either from the former owners or from the Fleet Corporation." In other words, the Fleet Corporation agreement was to have the vessel completed in accordance with plaintiff's contract, plan, and specifications; to pay therefor plaintiff's contract price (with a bonus added) and then, in settlement for the completed vessel, to take credit to itself for the amounts plaintiff had paid. And this plan was consummated. Another provision of this contract was that the Fleet Corporation agreed to indemnify and save harmless the builder from any and all loss or liability occasioned by reason of the "requisition order of August 3," or any subsequent acts or orders given by the Fleet Corporation "arising out of claims of the former owner."

If the plaintiff had voluntarily assigned its contract with the builder to the Government, and the latter had expressly assumed the unfulfilled obligations and later received the completed vessel, it would not more effectively have acquired plaintiff's contract, its rights, and obligations than actually resulted from what was done in this case. The Government requisitioned the incomplete vessel with the purpose of requiring the completion in accordance with the existing contract; it did require the carrying out of that contract (with slight modification); it took plaintiff's right to have the vessel; it received the vessel and appropriated plaintiff's partial payments thereon to its own use and benefit. The contract was performed; the vessel was delivered. I think the plaintiff's contract was taken and appropriated.

Under the findings of fact it may be said that the Government evidently concluded that the reasonable cost of constructing a like vessel would be $10 per ton more than the contract price because it agreed to pay that much more after the requisition, and upon that basis the judgment could be increased at least in the amount thus ascertained.

[fol. 35] IN THE COURT OF CLAIMS

VII. JUDGMENT OF THE COURT

At a Court of Claims held in the City of Washington on the Twenty-third day of April, A. D., 1923, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge and decree that the plaintiff,

as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum Two hundred and thirty-one thousand five hundred and forty-nine dollars and twelve cents ($231,549.12).

By the Court.

IN THE COURT OF CLAIMS

VIII. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On May 14, 1923, the defendant filed a motion for a new trial. Said motion was overruled by the Court on May 21, 1923.

IN THE COURT OF CLAIMS

IX. PLAINTIFF'S APPLICATION FOR APPEAL—Filed May 8, 1923

Now comes the claimant, the Brooks-Scanlon Corporation, by Jackson H. Ralston, its attorney of record, and respectfully prays for the allowance of an appeal in the above entitled cause to the Supreme Court of the United States from the judgment heretofore entered in this cause by this court on April 23, 1923.

Brooks-Scanlon Corporation, By Jackson H. Ralston, Attorney of Record.

IN THE COURT OF CLAIMS

X. ORDER ALLOWING APPEAL

It is ordered by the Court that the plaintiff's application for appeal be and the same is allowed. Entered June 4, 1923.

[fol. 36] COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and opinion of the court by Hay, J., and of the dissenting opinion by Campbell, Ch. J.; of the judgment of the court; of the plaintiff's application for an appeal and of the order of the court allowing said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Seventh day of June, A. D., 1923.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. [Seal of the Court of Claims.]

[fol. 37] COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the annexed is a true copy of the defendant's application for appeal and of the court's order thereon allowing same, filed in the above-entitled cause. Same to be filed with the record on appeal, filed by the plaintiff, in the Supreme Court of the United States, in said case.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Twentieth day of June, A. D., 1923.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. [Seal of the Court of Claims.]

[fol. 38] IN THE COURT OF CLAIMS OF THE UNITED STATES, DEC. TERM, ——

I. DEFENDANT'S APPLICATION FOR APPEAL

[Title omitted]

From the judgment rendered in the above-entitled cause on the 23rd day of April, 1923, in favor of the claimant, the defendants, by their Attorney General, on the 11th day of June, 1923, make application for, and give notice of, an appeal to the Supreme Court of the United States.

Robert H. Lovett.

Filed June 11, 1923.

II. ORDER OF COURT ALLOWING APPEAL

Order

It is ordered by the Court that the defendant's application for appeal be and the same is allowed.

Entered June 18, 1923.

Endorsed on cover: File Nos. 29,677, 29,695. Court of Claims. Term No. 367. Brooks-Scanlon Corporation, appellant, vs. The United States. (Filed June 11th, 1923.) Term No. 385. The United States, appellant, vs. Brooks-Scanlon Corporation. Filed June 23d, 1923. File Nos. 29,677, 29,695.

COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

PLAINTIFF'S EXHIBIT 4, REFERRED TO IN FINDING II, AND OMITTED FROM THE RECORD ON APPEAL IN THE ABOVE-ENTITLED CAUSE

Claimant's Exhibit 4

This agreement, made this 28th day of March, A. D. 1916, by and between the New York Shipbuilding Company, a corporation organized and existing under the laws of the State of New Jersey, of Camden, New Jersey, hereinafter referred to as the contractor, and the East Coast Transportation Company, a corporation organized and existing under the laws of the State of Delaware, and having a usual place of business in New York, N. Y., hereinafter called the owner:

Witnesseth that the contractor, for and in consideration of the sum of five hundred and ninety-five thousand ($595,000) dollars to be paid to it, does hereby covenant and agree to and with the owner to build in a workmanlike manner for the owner, its successors and assigns, a single-screw, steel cargo steamer, to be in all respects a duplicate of the steamship William O'Brien, built at the yard of the contractor, and delivered to the owner about April 17th, 1915, and the plans and specifications of the said steamer William O'Brien are hereby referred to and form part of this agreement.

The said vessel when completed as hereinabove provided shall be delivered to the owner, and shall be accepted by the owner at the dock of the contractor in Camden, New Jersey.

The owner hereby agrees upon the true and faithful performance of this agreement on the part of the contractor, that it will pay or cause to be paid to the contractor, its successors or assigns, or legal representatives, the sum of five hundred and ninety-five thousand ($595,000) dollars, in payments to be made as follows, to wit:

Fifty-nine thousand five hundred ($59,500) dollars in cash upon the signing of this contract;

Forty-five thousand dollars ($45,000) on March 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on April 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on May 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on June 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on July 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on August 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on September 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on October 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on November 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on December 1st, 1917, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty-five thousand dollars ($45,000) on January 1st, 1918, payable $20,000 in cash and $25,000 by note maturing February 1, 1918;

Forty thousand five hundred dollars ($40,500) on delivery of ship, payable $15,000 in cash and $25,000 by note maturing Feb. 1, 1918.

The above notes, during their existence, shall be a first lien on the vessel, and interest at the rate of five (5) per cent per annum thereon shall be paid in cash at maturity, at which time the principal shall be funded in serial coupon bonds in denominations of $1,000, secured by first mortgage on the vessel, bearing interest at the rate of five (5) per cent per annum, payable semiannually, and maturing as follows:

Fifteen thousand dollars ($15,000) in six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in one year from the date of said bonds;

Fifteen thousand dollars ($15,000) in one year and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in two years from the date of said bonds;

Fifteen thousand dollars ($15,000) in two years and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in three years from the date of said bonds;

Fifteen thousand dollars ($15,000) in three years and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in four years from the date of said bonds;

Fifteen thousand dollars ($15,000) in four years and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in five years from the date of said bonds;

Fifteen thousand dollars ($15,000) in five years and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in six years from the date of said bonds;

Fifteen thousand dollars ($15,000) in six years and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in seven years from the date of said bonds;

Fifteen thousand dollars ($15,000) in seven years and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in eight years from the date of said bonds;

Fifteen thousand dollars ($15,000) in eight years and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in nine years from the date of said bonds;

Fifteen thousand dollars ($15,000) in nine years and six months from the date of said bonds;

Fifteen thousand dollars ($15,000) in ten years from the date of said bonds.

It is further agreed that the owner will pay to the contractor at the time of issuing the above bonds the cash sum of twelve thousand, eight hundred and ten ($12,810) dollars to compensate the contractor for such loss as it may suffer by reason of accepting said bonds bearing interest at the rate of five (5) per cent per annum instead of bearing interest at the rate of six (6) per cent per annum.

It is further agreed that the owner, if it so desire, may anticipate any of the payments hereinbefore mentioned, and that the Union Trust Company of Pittsburgh, Pennsylvania, shall be selected and appointed to act as trustee under said mortgage hereinbefore mentioned, to have and to hold said mortgage on said vessel in trust for the benefit and security of said bonds; and that the said trustee shall execute and issue said bonds as above provided for.

Time of Delivery.—Said vessel shall be completed on or before February 1st, 1918, and should the said date of delivery be anticipated, all unpaid cash monthly instalments will be liquidated, and the note payments funded as provided, on the delivery of the vessel.

Changes.—It is further agreed between the parties hereto that, should it be necessary to make any alterations in the construction of said vessel, such alterations shall be agreed to in writing, and the drawings approved by both parties and at a value mutually agreed upon in writing, settlement for said alterations to be made on the completion of the vessel.

Inspection.—Every facility shall be afforded the owner, or his representative, to inspect the work as it progresses; and it shall be his duty, for the account of the owner, to promptly inspect and accept all material and workmanship that shall be in conformity with the specifications hereunto attached, and to reject all material and workmanship that does not conform to such specifications.

Insurance.—It is further understood and agreed that at all times, during the construction of said vessel, and until the same shall be delivered to the owner, the contractor shall, at his own cost and expense, keep the said vessel insured against all damages by fire, water, launching, or other accidents of any kind during the progress of construction and until completed and finally delivered to the owner, in an amount at least equal to the partial payments that shall have been made by the owner, the loss, if any, to be payable as the respective interests may appear.

Delays.—In case of any delay in the work of said vessel that shall be caused by strikes of workmen, fire, or inevitable accident, beyond the control of the contractor, such cause shall be deemed a sufficient excuse for such delay, and the time of delay so caused shall be added to the time for completion of said vessel.

Guarantee.—The contractor agrees to make good all defective workmanship or material that may develop within three months after the date of the delivery of the steamer to the owner, other than ordinary wear and tear: Provided, however, That in order to satisfy itself that such defects arise from defective material or workmanship, and not from mishandling, the contractor shall be allowed to have a representative on board the steamer, who shall be acceptable to the owner, and who shall have free access to all parts of the steamer and its machinery. The owner will provide said representative with free berth and meals during the entire time he remains on the steamer. The contractor will pay the wages of said representative.

It is further agreed that should the owner be satisfied, before the expiration of the three months, that the workmanship and material of the vessel is satisfactory, they may dispense with the representative of the contractor, and in this case the guarantee of the contractor will then cease.

Arbitration.—In case there should be any disagreement between the parties as to this agreement, recourse shall be had to arbitration. The party appealing shall serve written notice containing the name of the arbitrator upon the other party, who shall within ten (10) days appoint his arbitrator, and the hearing shall take place not later than ten (10) days thereafter; should these arbitrators fail to agree, they shall within ten (10) days from the date of such disagreement select a third arbitrator, and a decision of a majority of these arbitrators shall be final and binding upon both parties to this agreement. All fees of the arbitrators shall be borne by the party unsuccessful in the appeal, but the said arbitrators may apportion the expenses between the parties in any case when in their opinion the facts of the case warrant such apportionment.

This agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the respective parties hereto.

In witness whereof the said New York Shipbuilding Company and East Coast Transportation Company have caused their respective corporate seals to be hereto affixed, and these presents to be signed in duplicate by their respective presidents and attested by their respective secretaries this twenty-eighth day of March, A. D. nineteen hundred and sixteen.

New York Shipbuilding Company, Sam'l M. Knox, President. Attest: J. Wickersham, Secretary. [Seal.] East Coast Transportation Company, S. J. Carpenter, President. Attest: F. A. Rautenberg, Assistant Secretary.

A true copy:
Test this First day of October, A. D., 1923.
F. C. Kleinschmidt, Assistant Clerk Court of Claims. [Seal of the Court of Claims.]

[Endorsed:] 367/29677.

[Endorsed:] File No. 29,677. Supreme Court U. S., October Term, 1923. Term No. 367. Brooks-Scanlon Corporation, Appellant, vs. The United States. Plaintiff's Exhibit 4, referred to in Finding 2. Filed Oct. 2, 1923.

In the Supreme Court of the United States

OCTOBER TERM, 1923.

BROOKS-SCANLON CORPORATION, appellant, v. THE UNITED STATES.	No. 367.
THE UNITED STATES, APPELLANT, v. BROOKS-SCANLON CORPORATION.	No. 385.

APPEALS FROM THE COURT OF CLAIMS.

It appearing that the Court of Claims in its 6th Finding of Fact has made a clerical error and omission, it is hereby stipulated and agreed between the parties that such error and omission be corrected as follows: The "following letter," referred to in the 3d and 4th line of the 6th Finding of Fact, page 11 of the transcript of record, are the letter under date of August 28, 1917, printed at pages 12 and 13 of the transcript of record, and a duplicate of this letter under date of August 18, 1917, addressed to the East Coast Transportation Company instead of to the Carpenter-O'Brien Company, was sent by the Emergency Fleet Corporation to the East Coast Transportation Company on August 18, 1917. At the foot of each of these letters was written the words "Enclosure (1)." At the top of the paper first

quoted at length under the 6th Finding of Fact on page 11 of the record headed "United States Shipping Board Emergency Fleet Corporation, Washington, D. C., August 28, 1917, to Carpenter-O'Brien Company, Re New York Shipbuilding Corporation," were the words "Enclosure A." This document was enclosed with the letter printed at page 12 of the transcript of record. The document quoted at page 13 of the transcript of record headed "United States Shipping Board Emergency Fleet Corporation, Washington, D. C., August 18, 1917, to the East Coast Transportation Company, Re New York Shipbuilding Corporation," was marked "Enclosure A" and was the enclosure referred to in the letter from the Emergency Fleet Corporation to the East Coast Transportation Company of the same date hereinabove specified. It is further stipulated and agreed that this stipulation shall be filed with the clerk and printed and made part of the transcript of record or that the record be physically corrected by the clerk in accordance herewith.

Dated this 27th day of December, 1923.

WM. A. LANCASTER,
DAVID F. SIMPSON,
Counsel for Appellant.
EDWARD P. SANBORN,
of Counsel for Appellant.
JAMES M. BECK,
Solicitor General.
By HENRY M. WARD,
Of Counsel.

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